

OGC Has Reviewed

STATINTL

2 March 1950

L. L. Ploren

MEMORANDUM TO TORT CLAIMS FILE

STATINTL

SUBJECT: Duff v U.S. 171 Fed. 2nd 846 (1949)

1. The action was brought under the Federal Tort Claims Act by a 14 year old boy through his father and next friend, for personal injuries caused by a pistol wound accidentally inflicted by a Naval guard at the plant where his father was employed. It is conceded that the injured boy was a trespasser or at most a licensee upon the premises. He was standing in a sentry booth with the guard when the latter accidentally discharged his pistol while unloading it. The guard had received no special instruction in loading an automatic pistol, although he had inserted and removed a clip several times. On this particular occasion he had inserted a live shell into the chamber prior to investigating some prowlers.

2. In accordance with the Federal Tort Claims Act, the Maryland Tort Law prevailed, and the majority opinion stated that "the unloading of a pistol, while requiring care, is not necessarily a dangerous operation, \* \* \*" and while it conceded the possibility that the Maryland Law was unduly severe, it indicated that a trespasser or licensee must prove something more than ordinary neglect to recover. Judge Parker dissented, believing that one handling or using a dangerous instrumentality owes a duty of ordinary care to a bystander whose presence is known, even though the latter is a mere licensee.

3. It would seem that the dissenting opinion is a better and certainly more humane conclusion, but the main value of the case is a caveat that recovery under the Tort Claims Act depends upon the divergent Tort Law of the various local jurisdictions.

STATINTL